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EXAMINER

HOEL, MATTHEW D

ART UNIT

PAPER NUMBER

3714

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b> 10/823,829	<b>Applicant(s)</b> EVANS ET AL.	
	<b>Examiner</b> Matthew D. Hoel	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1 to 4 and 14 to 17 and 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims pertain to an analytical method of providing human capital management information. The examiner notes that the technological arts test is no longer used. The claims are just a manipulation of abstract information: "providing human capital management information," "providing a plurality of individual capability tests," "obtaining responses," and "cross-referencing responses." The claims should have a physical transformation or a concrete, tangible, and useful result. The claims should ideally cite providing a plurality of tests to a user via data input devices on a computer such as a keyboard, mouse, etc. and data output devices on a computer such as a monitor; manipulating the data stored in a computer's memory by a processor of a computer; presenting the results of the tests via an output device on the computer to the user; and cross-referencing the responses to create a comprehensive individual capability evaluation that rates a plurality of competencies and presenting the evaluation to the user via an output device on the computer. Alternatively, the test could be administered to a user on paper, the responses gathered and cross-referenced by a human on paper, and presented to the user on paper, taking care not to positively cite a human or part thereof

Art Unit: 3714

as a part of a system (MPEP 2105). The examiner generally points the applicants to MPEP 2106 (formerly the Interim Guidelines for Statutory Subject Matter Eligibility, Official Gazette, Nov. 2005).

3. Claims 14 to 20 are rejected under 35 U.S.C. 101 for reasons similar to Claims

4. Claims 9 to 13 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims cite "in a computer system, a method". It is not clear if the applicants are citing an apparatus or a method, or software, as a system can be an apparatus or software. Software should be cited as computer-executable instructions, stored on a computer-readable medium, that when executed by a computer, cause the computer to execute the steps of a process or method, the process or method further having a physical transformation or a concrete, tangible, and useful result. Two classes of subject matter cannot be cited in the same claim, although they can be cited separately in parallel, nearly verbatim, sets of claims, one set for a method and the other for an apparatus. A method should be cited with a physical transformation or a concrete, tangible, and useful result, as outlined for Claims 1 to 4 and 14 to 16. Alternatively, if the applicants intend to cite computer software, they should cite computer executable instructions stored on a computer-readable medium, that when executed by a computer cause the computer to execute the steps of...followed by the steps of a statutory method with a physical transformation or a concrete, tangible, and useful result. The method, if that is what the claim is, has no concrete, tangible, and useful result. Citing administering a test by accepting input from a test-taker via a physical input device, manipulating the data in physical memory by a

Art Unit: 3714

processor according to the criteria of the test, and displaying an action plan (test results) to the player via a physical output device, so the player could take actual action based on the suggested action plan would have a concrete, tangible, and useful result. In a claim in which the test is not administered by computer, taking the test on paper, grading the test (whether by hand or machine such as Scantron), and presenting on paper an individual action plan based on the result of the test to the test taker so that the test taker can take action based on the action plan, would similarly have a concrete, tangible, and useful result. The applicants could also cite a computer with its structure defined by its functionality by citing that a computer that executes the steps of...followed by the steps of the method. A computer in and of itself is inherently concrete and tangible. Please see MPEP 2106.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

6. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

8. Determining the scope and contents of the prior art.
9. Ascertaining the differences between the prior art and the claims at issue.
10. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 3714

11. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1-3, 5-7, 9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al., "Wood" (Pat. Pub. No. US 2002/0045154 A1) in view of Bonnstetter, et al. (U.S. patent 7,184,969 B1).

13. With respect to claim 1, Wood discloses an analytical method comprising the steps of:

14. providing a plurality of individual capability tests, (abstract, "determining personal characteristics of an individual or group... incorporates several personality dimensions...psychographics"; Figure 5 (elements 1330-1333) depicts a plurality of individual capability tests; page 4, section [0076], "the user is asked at 1100, to select one of many tests(s), quiz(zes), or sorter(s), and retrieves a set of questions from the test question database 1200);

15. obtaining responses to the plurality of questions of each of the plurality of individual capability tests from the individual (Figure 3 depicts a plurality of questions; page 5, section [0143], "The user may be asked questions about finances, career, human relationships, education, or business") and

16. cross-referencing the responses to a plurality of questions of at least two of the plurality of individual capability tests, to create a comprehensive individual capability evaluation (page 6, section [0165], "How the user responds is stored in the database and used in conjunction with the other raw data collected. The answers are stored into the user's profile", wherein multiple tests "USED IN CONJUNCTION" is analogous to

"CROSS-REFERENCING" responses to a plurality of questions of at least two of a plurality of tests; page 6, section [0167], "The first is data from behavior observed offline during role-play...The second way is to measure the data directly by observing the user in role-play"; page 6, section [0168], "If more testing is required...", wherein more testing is analogous to at least two of a plurality of individual capability tests; page 8, section [0181], "raw data is provided by each user via their answers and behaviors...are scored and compiled by algorithms and standardized into alphanumeric representations...so that the user's profile can be compared to personality models and profiles of others").

17. However, Wood does not explicitly disclose the individual capability tests each having a plurality of questions used to assess a plurality of attributes associated with at least one of the plurality of competencies; and rating the plurality of competencies of an individual.

18. Bonnstetter, however, in '969 discloses the plurality of individual capability tests, each having a plurality of questions used to assess a plurality of attributes associated with at least one of the plurality of competencies, and rating the plurality of competencies of an individual. The plurality of individual capability tests are the behavioral interview questions, each test being for a specific competency and having a plurality of questions (Figs. 6P to 6BB, leadership, employee coaching, teamwork, conflict management, interpersonal skills, problem solving, creativity, written communication, customer service, flexibility, goal orientation, planning, diplomacy, personal effectiveness, presenting, management, negotiation, persuasion, empathy, continuous learning, futuristic thinking, decision making, self-management; each test

Art Unit: 3714

having multiple written behavioral questions asking specific examples from past behavior on the job). Figs. 7E & 8E rate the scores of multiple respondents in each of the competencies.

19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied the plural tests for plural leadership competencies of '969 to the employment competency testing system of Wood '154. Wood suggests but does not elaborate on testing multiple employment competencies such as working outside, attention to detail, and working on teams [0153]. Wood also suggests using multiple tests, including the widely known Myers Briggs Type Indicator and the Keirsey Temperament Sorter ([0108] to [0125]). Wood also suggests collecting provided ([0144 to [0146]) and observed ([0147] to [0148]) behavioral data, which is what the behavioral interviewing of Bonnstetter Figs. 6P to 6BB do in more detail. The personalized advice system of Wood '154 can be used for corporate development, executive development, talent management, talent acquisition, and job fulfillment [0313], and specifically filling a job opening ([0347] to [0350]), which are solving the same basic problem as Bonnstetter's ('969) competency testing for matching the applicant's aptitudes to the demands the job (Abst.). The effect and advantage of this combination would be to provide more accurate testing of applicants' suitability for a position by requiring them to provide specific examples from their past performances on the job in the competency areas most relevant to the position in question.

20. Claim 2 is rejected for the reasons set forth hereinabove for claim 1 and furthermore the combination of Wood and Walters disclose a method wherein said



Art Unit: 3714

cross-referencing step includes creating a plurality of hallmark analysis within the comprehensive individual capability evaluation, each one of the plurality of hallmark analysis relating to a specific quality of the individual (Bonnstetter, Figs. 7E, 8E, 9E, and 10E, each individual scored in multiple competencies). Evaluation techniques may also include aggregating numeric responses for each construct, averaging across raters, and /or weighting responses.”; Wood, page 8, section [0179], “compiled by algorithms and standardized into alphanumeric representations...”; Wood, page 8, section [0188], “weighted averages”; Wood, page 8, section [0192]; Wood, page 13, section [0318], “match people based upon the closeness of measured characteristics. The matching would occur using a weighting scheme for all possible characteristics giving more weight and importance to certain characteristics. “; Wood, page 14, section [0333], “The system also incorporates variations to the above algorithms based on different weighting of answers, different weighting of scales, and incorporation of other models and all data gathered in module 1000. “, each analysis is in relation to a specific quality of an individual; Wood, page 9, sections [0198]-[0208]).

21. Claim 3 is rejected for the reasons set forth hereinabove for claim 1 and furthermore the combination of Wood and Walters disclose a method wherein said plurality of questions relate to one of the set of competencies including: Integrity, Continuous Learning, Speed/Initiative, Energized Team-building, Quality/Customer Oriented, Extraordinary Results, Effective Communication, Financial Literacy, Strategic Focus, and Emotional Maturity (Walters, Figure 14, “Emotional Stability/Maturity...Integrity...Leadership...Motivation...Oral Communication

Skills...Teamwork...Written communication skills”; Wood, page 5, section [0124], “Emotional Intelligence”; Wood, page 5, section [0143], “questions about finances...”).

22. Claims 5-7 are rejected on grounds corresponding to reasons given above for claims 1-3.

23. Claims 9 and 11-12 are rejected on grounds corresponding to reasons given above for claims 1-3.

24. Claim 13 is rejected for the reasons set forth hereinabove for claim 9 and furthermore the combination of Wood and Walters disclose a method wherein 13 said providing step includes using an interactive computer server accessible over a computer network (Wood, page 4, section [0067], “Referring now to FIG. 1 of the drawings, a simplified diagram is presented illustrating a computer network environment ... a user 10 may use his computer to visit a system proprietor's website running on the Internet, an Intranet, an Extranet, or any other electronic media platform 14. The top half of FIG. 1 illustrates one user accessing the system from a single computer terminal 10 via an Internet connection which may include a server 16.”).

25. Claims 4, 8, 10 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood in view of Bonnstetter and further in view of Taub (US Pat. No. 6,341,267 B1).

26. Claims 4 and 20 are rejected for the reasons set forth hereinabove for claim 1 and furthermore the combination of Wood and Bonnstetter disclose a comprehensive individual capability evaluation report identifying areas of improvement (Wood, giving

career advice [0153], feedback on getting along with coworkers [0284], advice matching and especially career advice [0304] to [0313], esp. [0306]; Bonnstetter, Fig. 9D results can be used for establishing a behavioral blueprint for success in the position, strengths and developmental needs identified Figs. 18E-F).

27. However, the combination of Wood and Bonnstetter do not explicitly disclose the step of creating an individual action plan containing a listing of transformational activities for enabling the individual to improve identified areas.

28. Taub discloses a method/system and apparatus for matching individuals with behavioral requirements and for managing providers of services further comprising the step of creating an individual action plan containing a listing of transformational activities for enabling the individual to improve identified areas (abstract, "to evaluate or select intervention strategies of furthering individual's attainment of required abilities", wherein "STRATEGIES OF...INDIVIDUAL'S ATTAINMENT OF ABILITIES" is analogous to "CREATING AN INDIVIDUAL ACTION PLAN CONTAINING A LISTING OF TRANSFORMATIONAL ACTIVITIES"; col. 21, lines 25-36, "If it is decided as depicted in block 236 that it is desired to continue the process to identify intervention strategies that can effect improvement in a level of the individual's attainment of required abilities...identifying roles and situations for individuals which have ability requirements for successful performance within the attained capabilities of the individual in all domains."; col. 23, lines 54-58, "It is anticipated that the processes described as depicted in FIGS. 2g and 2h may be applied to any intervention targeted to affect behavioral capabilities including instruction, self-study, formal or on-job training,

Art Unit: 3714

practice, therapy, and medical treatments.”, wherein the intervention is analogous to activities.)

29. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of creating an individual action plan containing a listing of transformational activities as disclosed by Taub into the method for determining individual characteristics and evaluating applicants as disclosed by the combination of Wood and Bonnstetter to provide an evaluation system for the capabilities of providers of services targeted to increase individual's capabilities and to more effectively and accurately match them with the needs of students-trainees-patients and to facilitate the further attainment of human capabilities (col. 3, lines 65- col. 4, line 1, and col. 4, lines 48-49). This combination would have the effect and advantage of providing a plan for improvement for the core competencies for the position, which plan would be carried out by actual behavior; this behavior could then be measured by the behavioral interviewing techniques of Bonnstetter requiring answers describing real actions taken pertaining to the desired behaviors. This would provide more accountability and practical guidance by giving the jobseeker or jobholder specific behaviors to improve suitability for or performance in the job, and measure whether progress was actually made by requiring the jobseeker or jobholder to be truthful about whether the actions were taken or not, essentially a self-reinforcing feedback loop.

30. Claims 8 and 9 are rejected on grounds corresponding to reasons given above for claim 4.

Art Unit: 3714

31. Claim 14 is rejected on grounds corresponding to reasons given above for claims 1 and 4.

32. Claims 15-16 are rejected on grounds corresponding to reasons given above for claims 2-3.

33. Regarding Claims 17-19: Wood corresponds multiple competencies or personality characteristics to each attribute or personality type (Para. 209-226).

Alternatively, Para. 234-256 of Wood teach personality types that correspond to actual types of actions: Promoter, Crafter, Performer, Composer, Supervisor, Inspector, Provider, Protector, Teacher, Counselor, Champion, Healer, Fieldmarshal, Mastermind, Inventor, Architect. These roles all correspond to actions requiring competency to be properly performed and. Each of these types has personality competencies such as bold, aggressive, entrepreneurial, charismatic, and so could be considered attributes in the sense claimed. Bold, aggressive, entrepreneurial (Para. 238), etc. are personality traits, but are also competencies that can be developed through training such as Toastmasters for public speaking, military Officer Candidate School or the military academies for leadership, winning friends and influencing people (Dale Carnegie training), etc.

#### ***Response to Amendment***

34. Applicant's arguments filed 7-20-2007 have been fully considered but they are not persuasive. The applicants believe that Wood does not suggest testing multiple attributes associated with multiple competencies. Wood suggests but does not elaborate on testing multiple employment competencies such as working outside,

attention to detail, and working on teams [0153]. Wood also suggests using multiple tests, including the widely known Myers Briggs Type Indicator and the Keirsey Temperament Sorter ([0108] to [0125]). Wood also suggests collecting provided ([0144 to [0146]) and observed ([0147] to [0148]) behavioral data. The personalized advice system of Wood '154 can be used for corporate development, executive development, talent management, talent acquisition, and job fulfillment [0313], and specifically filling a job opening ([0347] to [0350]). Wood does suggest multiple questions asking about multiple attributes of a single competency: Para. 32 talks about 70 questions asking about 16 temperament variants (attributes) of temperament (a competency) (Keirsey Temperament Sorter). Similarly, the Meyers-Briggs Type Indicator outlined in Para. 4 has multiple questions asking about 2 attributes of 4 competencies (introversion vs. extroversion, sensation vs. intuition, thinking vs. feeling, and judging vs. perceiving). In a similar manner, Walters asks questions pertaining to multiple attributes associated with each competency (Fig. 10, plausible questions and answers, different types of ideas, challenges assumptions, and selecting appropriate ideas corresponding to creativity; Fig. 11, persevering in challenging situations, increasing knowledge, devoting appropriate time, seeking help when appropriate, and setting goals corresponding to motivation). Wood and Walters are thus sufficiently analogous.

35. The affidavit from Mr. Evans filed on 7-20-2007 under 37 CFR 1.131 is sufficient to overcome the Walters reference. The rejections based on Walters are withdrawn; the other rejections still stand. The previous affidavits from Snively, Evans, Pfenninger, and Erdman were of no effect for the reasons cited in the last office action. The last

"Response to Arguments" of 4-20-2007 are incorporated herein by reference. The applicants state on Page 8 of their remarks that the act of obtaining responses involves physical, tangible steps, regardless of whether the tests are administered by computer, pencil and paper, typewriter, or other mechanism. These steps do not pertain to the claim language because they are not cited. Limitations from the specification are not read into the claim language. The examiner does not question the utility of the claims. They must however have a physical transformation or a concrete, tangible, and useful result as they appear to (except for Claims 5 to 8) pertain to methods. Regarding in re Ngai and in re Gulack, the examiner does not question the utility of the questions, only the concrete, tangible, and useful result. The methods as written do not pertain to non-functional descriptive matter; the questions of the test have utility, but no tangible result. The examiner points the examiner points the applicants to CAFC decision 2006-1286 for application 09/461,742, available on <http://fedcir.gov/opinions/06-1286.pdf>, and downloaded on Sept. 28<sup>th</sup>, 2007. The CAFC ruled that Claim 1 on pages 2 and 3 of the decision was non-statutory subject matter. Similar to Claim 1 of the present application, Claim 1 of '742 claims enrolling or registering, analogous to the test of the claims, and determining an award or a decision, analogous to the cross-referencing or individual action plan. It is not clear in Claim 1 of 2006-1286 if the enrolling or registering is done by computer or paper and pencil or whether the decision or award is concrete, tangible, and useful as it would if a monetary award for damages were actually cited as being awarded to a party. Method claims in class 463 (gaming devices) are usually considered to be concrete, tangible, and useful if a monetary award in the event of a

Art Unit: 3714

winning situation is actually awarded to a player, for example. Regarding the Wood reference, it discloses multiple personality dimensions or attributes based on competencies (Para. 209-226).

### ***Citation of Pertinent Prior Art***

**36.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *in re Ngai*, *in re Gulack*, and *in re Comiskey* are considered to be pertinent pertaining to 101.

### ***Conclusion***

**37.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

**38.** A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



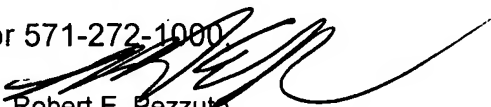
Art Unit: 3714

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

40. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

41. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew D. Hoel  
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Robert E. Pezzuto  
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